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SUPREME COURT, U.S.

No. 45

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

JOE J. FISHER,
Petitioner,

VS.

R. C. PACE, SHERIFF OF JASPER COUNTY, TEXAS,
Respondent

SUPPLEMENT TO PETITIONER'S BRIEF

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To the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner has heretofore filed a brief in support of his Petition for Writ of Certiorari, and it has been Petitioner's intention to stand on such brief, rather than to file any additional argument or memorandum of authorities. However, that brief was pre-

pared prior to the time that Petitioner had received a report of this Court's decision in *In Re Oliver*, 333 U. S. 257, 68 S. Ct. 499 (1948). At least three aspects of that decision are so pertinent to the case at bar that Petitioner is filing this short discussion of the *Oliver* case as a supplement to the authorities and arguments contained in his original brief.

I.

In the first question set forth in his Petition for Writ of Certiorari and in the first point of his supporting brief Petitioner discussed the fact that the decision of the Supreme Court of Texas—as such decision was construed by the dissenting judge in that Court—reflects a refusal on the part of that Court to examine the record in a summary contempt case to see if such record contains any probative evidence which would support the contempt judgment, and Petitioner argued that such refusal is violative of due process.

In his opinion in the *Oliver* case, Mr. Justice Frankfurter points out that a summary contempt judgment is not violative of due process "provided that the State furnishes the accused a public tribunal before which he has full opportunity to be quit of the finding." Following this statement, Mr. Justice Frankfurter continues:

"But an opportunity to meet a charge of criminal contempt must be a fair opportunity. It would not

be fair, if in the court in which the accused can contest for the first time the validity of the charge against him, he comes handicapped with a finding against him which he did not have an adequate opportunity of resisting."

The relevance of this language to the instant situation is patent. In the case at bar, the Supreme Court of Texas was the only tribunal before which Petitioner had an opportunity to obtain a hearing. Yet when Petitioner appeared before that Court he found himself most severely handicapped by the Court's refusal to examine the facts to see whether a contempt had, as a matter of law, been committed, and by the Court's philosophy that:

"Whether he committed the act charged is conclusively determined by the order or judgment of the trial court in the proceeding wherein he is adjudged in contempt, provided that court possessed jurisdiction. We may consider the facts only for the purpose of determining whether they constituted acts sufficient to confer jurisdiction upon the court to make the particular order." 206 S. W. (2d) 1000, 1003.

Hence, if an opportunity for a full and complete trial is a requisite of due process—and this Honorable Court so held in the *Oliver* case—Petitioner plainly was deprived of both liberty and property without due process by reason of the fact that the Supreme Court of Texas examined the facts in his case solely for the purpose of discovering jurisdic-

tion and refused to examine such facts to ascertain whether they constituted a contempt.

II.

In the *Oliver* case this Court repeated and emphasized its earlier statements that summary punishment for contempt may be had only in the event of what the Court termed "court-disrupting misconduct," and the Court entered into an examination of the facts to ascertain whether any such misconduct existed. No such misconduct is present in the case at bar. Rather, Petitioner, as an attorney engaged in representing the interests of his client, attempted to inquire as to the scope of the court's ruling and, when he was prevented from so doing, took an exception to the language which the court used in so preventing him. The contempt judgment followed the taking of this exception. Instead of constituting "court-disrupting misconduct," Petitioner's actions prior to the contempt judgment were actions which were essential to an understanding of the court's ruling and to the preservation of his client's interests. Obviously, Petitioner could not properly proceed with the trial unless he understood the scope of the ruling about which he attempted to inquire. Obviously also, Petitioner could not stand idly by and permit his client's interests to be jeopardized by waiving an exception to the court's intemperate language. Consequently, with the requirement of "court-disrupting misconduct" being reiterated and

stressed in the *Oliver* case, Petitioner submits that the erroneous nature of the decision of the Supreme Court of Texas is plainly revealed.

III.

As is pointed out by the writer of a note in 48 *Columbia Law Review* 813, 814, this Court, in the *Oliver* case, quite properly did not find it necessary to pass upon the constitutionality of a situation in which a trial judge adjudicates upon the basis of his own accusation. In *Cooke v. United States*, 267 U. S. 517, 45 S. Ct. 390, in a similar situation in which the judge who imposed the contempt judgment was also an active participant in the facts which surrounded the alleged contempt, this Court remanded the case with instructions that it be reheard before some judge other than the one who participated in the dispute. In the case at bar, the dissenting judge expressed the view that Petitioner could not have been accorded a fair trial by "a judge who had lost his judicial poise and fairness" (206 S. W. (2d) 1000, 1011), and, in the *Columbia Law Review* note above referred to, the writer concluded:

"It would be desirable in such cases that, in addition to the protection against secret and summary punishment, an alleged contemnor be afforded a hearing before a judge other than his accuser."

As Petitioner has contended in his Petition for Writ of Certiorari, just as pecuniary interest in a judgment may prove a compelling force for the ren-

dition of an inequitable judgment and may thereby be violative of due process, so also, it is respectfully submitted, may anger or vindictiveness prove an equally compelling force, and the presence of such anger and vindictiveness—as plainly revealed by the record—deprives the judgment herein of any element of due process.

WHEREFORE, Petitioner prays as in his Petition for Writ of Certiorari.

Respectfully submitted,

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